

IP 01-0135-CR 1 B/F USA v Merriweather [2]
Magistrate Kennard P. Foster

Signed on 04/27/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 01-135-CR-1 (B/F)
)	
SHEILA MERRIWEATHER,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on April 10, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on April 6, 2006, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §3401(i) and 3583(e).

All proceedings were held on April 25, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Ms. Merriweather appeared in person with her appointed counsel, William Dazey, Office of Indiana Federal Community Defender. The government appeared by Christina McKee, Assistant United States Attorney. U. S. Parole and Probation appeared by Chris Dougherty, U. S. Parole and Probation officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That William Dazey, Office of Indiana Federal Community Defendant, was present and appointed by the Court to represent Ms. Merriweather in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Ms. Merriweather and her counsel who informed the Court that they had read and understood the specifications of violation and waived further reading thereof.

3. Ms. Merriweather was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition.

4. That Ms. Merriweather would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Ms. Merriweather had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Ms. Merriweather had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on April 10, 2006.

7. Mr. Dazey stated that Ms. Merriweather desired to waive the preliminary examination and proceed to the revocation phase of the proceedings this date. Ms. Merriweather waived the preliminary hearing in writing and was held to answer.

8. Ms. Merriweather, by counsel, stipulated that she committed the violations specified as set forth in each of the Petition for Warrant or Summons for an Offender Under Supervision, filed April 6, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>The offender submitted urine screens which tested positive for cocaine on March 12, 2006, March 23, 2006, and March 26, 2006. She has admitted smoking crack-cocaine.</p> <p>The offender also submitted urine screens which tested positive for cocaine on May 24, 2005, May 31, 2005, and June 13, 2005. These urine screens were reported in a prior petition and resulted in a modification for a six month residency at the Volunteers of America in November 2005.</p>
2	<p>“The defendant shall not illegally possess a controlled substance.”</p> <p>As indicated above, the offender submitted urine samples which tested positive for cocaine. Therefore, she possessed an illegal substance in order to consume it.</p>
3	<p>“The defendant shall participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer, and shall pay a portion of fees of the program.”</p> <p>The offender failed to report for a required urine screen on March 20, 2006, and failed to report for a counseling session on March 23, 2006. The offender has failed to pay her required substance abuse co-pay fee of \$150, which is used for the cost of urine collection/testing and treatment sessions.</p>

Counsel for the parties further stipulated the following:

- 1) Ms. Merriweather has a relevant criminal history category of VI. *See*, U.S.S.G. §7B1.4(a).

2) The most serious grade of violation committed by Ms. Merriweather constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Ms. Merriweather is 21-27 months.

4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 21 months to the custody of the Attorney General. After service of sentence, the defendant shall not be subject to supervised release.

9. The Court then placed Ms. Merriweather under oath and inquired directly of her whether she admitted committing violations of supervised release contained in the Petition to Revoke Supervised Release, filed April 6, 2006.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of her supervised release. The defendant's supervised release is therefore **REVOKED** and Sheila Merriweather is sentenced to the custody of the Attorney General or his designee for a period of 21 months. After service of her sentence, the defendant shall not be subject to supervised release. The Court recommends that the defendant be subject to the Bureau of Prisons' extensive drug treatment program during commitment. The Court also recommends that the defendant be designated to the Federal Medical Center at Lexington, Kentucky, or like facility.

Counsel for the parties and Ms. Merriweather stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;

2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Ms. Merriweather's supervised release.

The Magistrate Judge requests that Chris Dougherty, U. S. Parole and Probation Officer, prepare for submission to the Honorable Sarah Evans Barker, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

IT IS SO RECOMMENDED this 27th day of April, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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U. S. Parole and Probation

U. S. Marshal Service